

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

STERICYCLE, INC.
Employer

and

Cases 04-RC-260851

INTERNATIONAL ASSOCIATION OF
SHEET METAL, AIR, RAIL AND
TRANSPORTATION WORKERS, LOCAL
UNION #44
Petitioner

ORDER

The Employer's Request for Review of the Acting Regional Director's Decision and Direction of Election¹ and the Regional Director's Decision and Certification of Representative is denied as it raises no substantial issues warranting review.

¹ On November 9, 2020, the Board issued its decision in *Aspirus Keweenaw*, 370 NLRB No. 45 (2020), which sets forth the guidelines and parameters applicable to determining the propriety of a mail-ballot election under the current circumstances of the Covid-19 pandemic. In denying review, we note that the direction of a mail-ballot election was consistent with the concerns articulated in *Aspirus*. Moreover, the election has been held and setting it aside would result in waste of resources and delay and would be a disservice to the employees who cast their ballots in good faith. Denying review is also warranted because the 7-day testing positivity rate in Luzerne County, Pennsylvania, where the Employer's facility is located, is 8.01% as of February 15, 2021 and would thus support a mail-ballot election under *Aspirus* if this election were set aside and a new determination were to be made now. See <https://covid.cdc.gov/covid-data-tracker/#county-view>. Under the foregoing circumstances, we find no reason to overturn the Acting Regional Director's determination.

In denying review of the Regional Director's Decision and Certification of Representative, Member Ring agrees with the Regional Director that the circumstances surrounding the ballot count conducted via Zoom, including the brief interruption of the Zoom call and the angle of the camera used to transmit the ballot count, did not raise a reasonable doubt about the fairness and validity of the election. Mail-ballot elections are "more vulnerable to the destruction of laboratory conditions than are manual elections" because there is no Board agent present to monitor the election and assure employees and parties, by his or her presence and supervision, that the integrity of the election is being preserved. *Mission Industries*, 283 NLRB 1027, 1027 (1987). These challenges are even greater when, as here, the ballot count is necessarily conducted using video technology. Member Ring recognizes that the difficulties experienced in this case do not appear to be frequent occurrences and appreciates the generally successful efforts by regions to conduct ballot counts using video technology. In order to maintain the fullest confidence in the integrity of Board elections, he encourages regions to

LAUREN McFERRAN,	CHAIRMAN
WILLIAM J. EMANUEL,	MEMBER
JOHN F. RING,	MEMBER

Dated, Washington, D.C., February 22, 2021.

ensure that their procedures afford parties the greatest possible opportunity to monitor and view the state of the ballots at all times.

Chairman McFerran agrees to deny review of the Acting Regional Director's mail-ballot determination for the reasons given in her separate opinion in *Aspirus*. She further agrees, however, that setting aside the election at this point would be inefficient and unfair to the unit employees, and that, even under the majority opinion in *Aspirus*, the Acting Regional Director's decision should be affirmed based on the statistics set out above.